IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 36 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RAJESH AMRUTLAL SONI

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR. KP RAVAL, LD. APP for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE A.R.DAVE

Date of decision: 07/05/97

ORAL JUDGEMENT :(Per Soni, J.)

Heard Ld. Counsel Mr. P.M. Thakkar for the appellant.

When Ld. Counsel felt that this Court is not inclined to admit the appeal, relying on sec. 384 of Cr.P.Code, he contended that in the instant case, there

are sufficient grounds for interfering with the conclusion and conviction recorded by the Ld. Addl. Sessions Judge. The question, therefore, is whether there are sufficient grounds for interfering with the conviction recorded by the Ld. Addl. Sessions Judge. We will answer the same hereinafter after considering the contentions and arguments advanced by the Ld. Counsel for assailing the judgment of the Ld. Addl. Sessions Judge.

The appellant- original accused has filed this appeal against the judgment and order of conviction under sec. 302 of the I.P.Code in Sessions Case No. 175/94 wherein Ld. Addl. Sessions Judge has awarded imprisonment of life and a fine of Rs. 2000/, I/d to further undergo R/I for 1 year. We have with us the whole record and proceedings of the case which has been perused by the Ld. Counsel for the appellant also and has based his arguments referring to the said record and proceedings.

The prosecution story in nutshell is that in the evening of 19.9.1994, at about 5.30 P.M. the complainant and his wife had gone for a walk. On the return, they found a mob collected near their house and entering the house, they saw that the daughter-in-law was lying dead in pool of blood with number of injuries. They also found three persons having caught hold of the present appellant. On complaint being filed, the same was registered, investigation had started. On completion of investigation, the appellant was chargesheeted and on his having not pleaded guilty, necessary evidence was led by the prosecution and at the end, Ld. Addl. Sessions Judge found the appellant guilty of the offence charged. The
appellant had filed written arguments under sec. 314 of the Code of Criminal Procedure, 1973 (" Code " for short).

The conviction of the appellant is challenged mainly on the grounds that the time of incident as referred to in the complaint does not tally with the medical evidence more particularly referred to in Post Mortem Notes (exh.28) referring to the Rigor Mortis in column No. 11. To substantiate this contention, Ld. Counsel has relied on the evidence of P.W. 11 (Exh. 27) Dr. Kiranbhai Sagothia. The doctor, in his cross-examination in para-6 has stated that " in column no. 11 of the post-mortem notes, it is stated that the rigor mortis plus on the body. According to him, it means that it had developed. In column No.12 of Post-mortem notes, what is stated is " PM lividity plus

on different part of the body." In his opinion, it means that it has also developed. Rigor mortis starts in ordinary circumstance within one hour of the demise. It is true that rigor mortis starts after one hour of the demises and develops within 3 to 4 hours. It is true that PM Lividity develops within an hour and completes within four hours of the demises. " Relying on this evidence of the doctor, it is contended that the incident must have taken place by about 4.30 p.m. and when prosecution witnesses are referring to the time of the incident being 5.45 P.M. they are suppressing something from the Court and, therefore, evidence should not have been believed.

All these timings given by the doctors are not the exact timings. They leave margin of about one hour which may be plus and minus. So, it may be some what plus and minus. The gap, according to the witness is only of an hour which, in our opinion, cannot be taken into consideration to reject the evidence of the prosecution on this point.

It is contended by the Ld. Counsel Mr. Thakkar for the appellant that the investigating agency has found blood stained knife from the scene of offence. Though the knife is found from the scene of offence, the prosecution has not produced the report of the Finger Print Expert. Unless it is established by the defence that the finger prints were taken from the knife, there is no question of production of the report of the same. From the evidence of the investigating officer, it is contended by the Ld.Counsel for the defence that they had called for Finger Print Expert. This contention of the Ld. Counsel for defence is based on a wrong reading of evidence. Investigating Officer has written to the Forensic Science Laboratory to visit the site vide Exh. 51. There is no specific instructions that they are required there for taking finger prints either on knife or on VCR and, therefore, in absence of any positive evidence that Finger Prints were taken and are not produced before the Court, no adverse inference about the same can be drawn.

According to the Ld. Counsel for the defence, it is in evidence that the palms of the appellant accused were blood stained. However, when he was arrested, no blood is found on the palm. It will be relevant to state that incident took place at about 5.45 P.M. and he was arrested on 11.30 P.M. It is one of the contentions of

the Ld. Defence Counsel that though the appellant accused was in custody of the witnesses, the arrest report is shown of 11.30 P.M. It is true that he is shown to have been arrested on 11.30 P.M., but the investigating agency immediately by taking over the custody of the accused, cannot arrest a person without undergoing necessary formalities of the investigation. Therefore, we do not find any fault in this delayed arrest.

Ld. Counsel for the defence has further contended that in view of the evidence of the doctor, injuries found on the person of the deceased cannot be caused by the knife- article No. 3. We are unable to agree with this contention in view of the deposition of the doctor. The doctor P. W. 11 has, in the examination-in-chief stated that " I am shown muddamal knife. On perusing the same, I say that above injuries could have been inflicted by the same." In the cross-examination, he has denied the possibility of two knives used for the same. He has also stated that " he cannot say whether two weapons (knives) are used for the above injuries." He has further stated that " I am shown muddamal knife wherein one side is sharp and other is blunt..... on measuring the same, I say that portion with teeth like of the knife is 8 cms. long.... Perusing the muddamal, I say that knife portion is sharp and the other side is having teeth meaning thereby it is like saw edge. Thus, the saw like part is 8 cms. He has denied the situation that by muddamal knife, injury nos. 1 & 2 as stated in the post mortem note cannot be caused." In view of this fact, it is clear, in our opinion, that the injuries on the person of the deceased are possible by the muddamal knife- article No. 3. Therefore, we do not find any substance in the contention that the injuries on the person of the deceased could not be caused by the muddamal knife.

Ld. Counsel for the appellant requested to call for muddamal knife. In view of the evidence of the doctor as stated above, we do not find it necessary to call for the same.

This apart, the following circumstances have clinching effect and are not explained at all by the defence:-

(i) that the accused appellant is found on the spot from the house near the deceased by three witnesses namely Batukbhai, Chetanbhai and Ratibhai against whom the accused has to say

nothing;

(ii) clothes of the accused are found stained with human blood. No doubt, the same was not sufficient to detect the group of the blood;

(iii) despite the question was put to the accused about his presence on the spot and his clothes being blood stained, he has not advanced any explanation for the same. He simply replied that it is not true.

Ld. Counsel for the defence has taken us through Exh. 66, written arguments. We have gone through the same and we do not find any reason which appeals us to interfere with the conclusions arrived at by the Ld. Addl. Sessions Judge. Ld. Counsel for the defence has drawn our attention to para-9 of the written arguments which refers to the identity of the accused. If Accused is found on the spot, on question of identity arises as witnesses had identified him in the Court.

No other contentions other than what are discussed herein above are raised. In view of the above discussion, we do not find any ground much less sufficient ground to interfere with the conviction recorded by the Ld.Addl. Sessions Judge. Hence, present appeal is dismissed.

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